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15 COURTHOUSE NEWS SERVICE

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 Courthouse News Service,
20 Plaintiff,

21 vs.

22 Michael Planet, in his official capacity as
23 Court Executive Officer/Clerk of the
24 Ventura County Superior Court,
25 Defendant.

Case No. CV11-08083 R (MANx)

**PLAINTIFF COURTHOUSE NEWS
SERVICE'S REPLY IN SUPPORT
OF REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
OPPOSITION TO MOTION TO
DISMISS AND REQUEST TO
STRIKE ARGUMENT IN
DEFENDANT'S "RESPONSE"**

Date: August 18, 2014
Time: 10 a.m.
Judge: Hon. Manuel L. Real

1 Together with its Opposition to Defendant Michael Planet’s (“Defendant”)
2 Motion to Dismiss (“Opposition”) (ECF #66), Plaintiff Courthouse News Service
3 (“Courthouse News” or “CNS”) filed a Request for Judicial Notice asking the Court
4 take judicial notice of numerous state statutes, court rules, and constitutional
5 provisions pursuant to Federal Rule of Evidence 201 (“RJN”) (ECF# 67).

6 Defendant did not oppose or object to the RJN. Instead, he filed a “response”
7 in which he states, in the opening paragraph, that he “agrees that this Court *can (and*
8 *should)* take judicial notice of the statutes and rules cited in CNS’s Request to Take
9 Judicial Notice.” (Defendant’s Response to Plaintiff’s Request for Judicial Notice,
10 ECF #71, at 1:20-25) (“Response”) (emph. added). The remainder of the Response,
11 including Exhibits A and B, consists of more than 23 single-spaced pages of
12 *argument* as to why, according to Defendant, the statutes, rules and constitutional
13 provisions included in the RJN do not support Courthouse News’ Opposition but
14 rather support his Motion to Dismiss. Defendant’s Response then goes on to cite
15 and discuss numerous other authorities that he contends also support his Motion to
16 Dismiss.

17 The only portion of the Response that is even remotely procedurally proper is
18 the opening paragraph (1:20-25). The Court should disregard and strike the
19 remaining portions of the Response, including Exhibits A and B.

20 Although Courthouse News’ Opposition referenced the authorities cited in its
21 RJN, the RJN itself did not discuss those authorities or otherwise include legal
22 argument as to their proper interpretation, because it would have been improper to
23 do so in an RJN. *See Ortega v. J.B. Hunt Transport, Inc.*, 2013 U.S. Dist. LEXIS
24 160582, *8-9 (C.D. Cal. Oct. 2, 2013) (granting a request for judicial notice as to a
25 recent court opinion, but denying judicial notice of the arguments regarding the
26 decision and striking the arguments from the request for judicial notice) (overruled
27 on other grounds); *Barsch v. O’Toole*, 2007 U.S. Dist. LEXIS 86575, *7 (N.D. Cal.
28 Nov. 26, 2007) (striking portion of RJN that contained “improper argument”).

1 In contrast, Defendant – presumably in an attempt to avoid this Court’s page
2 limit for reply memoranda – presents a litany of legal arguments in his Response
3 that are irrelevant to and improper for the Court to consider in ruling on the RJN.

4 To the extent Defendant is seeking judicial notice of the rules and statutes
5 cited in Exhibit B to the Response, such request is improper as part of a “response”
6 to an opposing party’s request for judicial notice. And for the same reasons detailed
7 in Courthouse News’ concurrently filed Opposition to Defendant’s RJN, which is
8 incorporated herein by reference, judicial notice of Defendant’s *arguments* in his
9 Response, including in Exhibits A and B, would be improper.¹ Such arguments
10 should have been made, if at all, in Defendant’s reply memorandum in support of
11 his motion to dismiss (ECF #70).

12 The problem, of course, is that Defendant could not have fit all of this
13 additional argument into his reply memorandum because it is already 25 pages long,
14 the maximum number of pages allowed for a memorandum of points and
15 authorities. Central District Local Rule 11-6. The argument in the Response thus
16 constitutes argument in excess of that page limit and should be stricken for the
17 additional ground that it exceeds the page limit set forth in Local Rule 11-6.²

18 In ruling on Courthouse News’ RJN, the Court need only consider whether
19 the statutes and rules referenced in the RJN are appropriate for judicial notice.
20 Because they indisputably are, the Court should grant CNS’s request for judicial
21
22

23 ¹ In addition, CNS disputes Defendant’s arguments regarding his interpretation of
24 these statutes and rules, which alone is sufficient to deny any perceived request for
25 judicial notice. *See* Fed. R. Evid. 201(b) (“The Court may judicially notice a *fact*
that is *not subject to reasonable dispute.*”) (emph. added).

26 ² Although L.R. 11-6 makes an exception to the 25-page limit for “exhibits,”
27 allowing a party to evade the page limit simply by putting argument into a document
28 characterized as an exhibit is contrary to the intent of the rule and should not be
permitted. *See* L.R. 11-7 (“Appendices shall not include any matters which
properly belong in the body of the memorandum of points and authorities”).

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notice and strike Defendant's entire Response except for page 1, lines 20 through 25.

Dated: August 8, 2014

BRYAN CAVE LLP

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COURTHOUSE NEWS SERVICE